

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL**

APPLICATION OF THE AMERICAN : DOCKET NO. 06-05-13
CIVIL LIBERTIES UNION OF :
CONNECTICUT (ACLU-CT) FOR :
INVESTIGATION OF AT&T AND :
VERIZON REGARDING DISCLOSURE :
OF CT CUSTOMER INFORMATION :
AND REQUEST FOR RULEMAKING : JUNE 28, 2006

**REPLY COMMENTS OF RICHARD BLUMENTHAL, ATTORNEY
GENERAL FOR THE STATE OF CONNECTICUT**

Richard Blumenthal, Attorney General for the State of Connecticut (“Attorney General”), hereby files his reply comments in the above-captioned proceeding. In these reply comments, the Attorney General urges the Department of Public Utility Control (“DPUC” or “Department”) to conduct a thorough investigation concerning whether the Southern New England Telephone Company d/b/a AT&T Connecticut and AT&T Woodbury (collectively, “AT&T Connecticut”) and Verizon New York (the “Companies”) have improperly disclosed confidential customer information in Connecticut to the National Security Agency (“NSA”) without appropriate warrants, court orders or subpoenas. The Attorney General further urges the Department to promulgate regulations that protect customers reasonable expectations of privacy. The promulgation of new regulations has become even more urgent now that AT&T has announced a new “privacy policy” explicitly stating that the customer’s data belongs to the company and relaxing the circumstances under which that data will be kept confidential.

I. BACKGROUND

On May 24, 2006, the American Civil Liberties Union of Connecticut (“ACLU-CT”) filed a complaint with the Department in which it requested that:

the DPUC undertake an investigation to determine whether AT&T and/or Verizon have violated any rule of the DPUC or other Connecticut law. If either of these companies is found to have committed a violation, we further request that the DPUC take all appropriate action within its jurisdiction to ensure that such violations do not continue and to take such action as necessary to penalize such violations. We also request that the DPUC promulgate regulations pursuant to which such disclosure would be explicitly prohibited.

ACLU Complaint, 3-4. The ACLU-CT also provided draft regulations directed at explicitly protecting the confidentiality of customer information for the DPUC’s consideration. Complaint, Exhibit H.

On May 31, 2006, the DPUC initiated this proceeding and requested written comments from interested persons addressing the ACLU’s Complaint. Also on May 31, 2006, the DPUC issued interrogatories to the ACLU, AT&T Connecticut and Verizon.

The interrogatories directed to AT&T Connecticut and Verizon asked:

Did the [the Company] provide any customer information to the NSA? If yes, provide a description of that information and the time period during which the Connecticut telephone company affiliates made this information available. Indicate the service offerings from which the customer data was derived (intrastate, interstate or both). What was the nature of the request made by the NSA for the information?

On June 14, 2006, the Companies filed their preliminary comments, in which they both claimed that the Department was preempted from conducting this inquiry “in light of the national security and state secrets concerns that have been raised by the United States,” AT&T Connecticut Comments, 2, and the “United States government has made it clear that it will take steps to prohibit the disclosure of this information.” Verizon

Comments, 4. Both Companies further refused to answer Department interrogatories for the same reasons.

On June 22, 2006, AT&T announced a new privacy policy, which now provides that that AT&T and not its customers owns the customers' confidential information and can use it "to protect its legitimate business interests, safeguard others, or respond to legal process." See CNN, USA Today and Washington Post news articles, attached as Exhibit A.

II. DISCUSSION

The Department should reject the Companies' claims that national security interests compel the Department to abandon its investigation of whether the Companies improperly disclosed customer information. To the contrary, the Department has the obligation to investigate and protect customers reasonable privacy interests consistent with federal and state law. The Department should not rely upon the Companies' self serving claims that national security reasons trump any Department review of the Companies misconduct. The United States Department of Justice ("DOJ"), and not AT&T Connecticut or Verizon, represents the interests of the United States government. To the extent that the issues raised in this proceeding relate to or affect national security, the US DOJ can and should make its position known. Until that time, however, the Department should continue its investigation into the potentially wrongful conduct of the Companies in its capacity as the state agency charged with protecting customers from wrongful conduct of public service companies. Finally, the Department should promulgate new regulations to protect customers reasonable privacy expectations.

A. The Department has Broad Authority to Investigate and Review the Conduct of Public Service Companies and to Protect the Reasonable Privacy Expectations of Consumers

The Department has broad authority to regulate all aspects of the manner of operation of AT&T Connecticut and Verizon. AT&T Connecticut and Verizon are public service companies under the jurisdiction of the Department. Conn. Gen. Stat. § 16-1. Conn. Gen. Stat. § 16-11 provides the Department with plenary authority to regulate all aspects of the manner of operation of Connecticut public service companies. Specifically, Conn. Gen. Stat. § 16-11 states, in relevant part, that:

[t]he general purposes of this section and sections 16-19, 16-25, 16-43, and 16-47 are to assure to the state of Connecticut its full powers to regulate its public service companies, to increase the powers of the Department of Public Utility Control and to promote local control of the public service companies of this state, and said sections shall be so construed as to effectuate these purposes.

In addition, Conn. Gen. Stat. § 16-247f(a) states that “[t]he department shall regulate the provision of telecommunications services in the state in a manner designed to foster competition and protect the public interest.” (Emphasis added). The Connecticut Supreme Court has recognized that through Conn. Gen. Stat. § 16-247f(a), the legislature “conferred a broad grant of authority on the Department” to regulate telecommunications services. Southern New England Telephone Co. v. Department of Public Utility Control, 261 Conn. 1, 22 (2002) (the “SNET Decision”).

Based upon this language, there can be no doubt that the legislature intends for the DPUC to exercise broad powers to regulate public service company in a manner to “protect the public interest.” As discussed above, Conn. Gen. Stat. § 16-11 gives the Department broad authority to regulate the manner of operation of public service

companies in Connecticut. Pursuant to its terms, Section 16-11 must be read together with Conn. Gen. Stat. § 16-247f(a) “to assure the state of Connecticut its full powers to regulate its public service companies, to increase the powers of the Department of Public Utility Control and to promote local control.”

B. The Disclosure of Confidential Customer Information to the National Security Agency Directly Impacts the Public Interest

The improper disclosure of confidential customer information without appropriate court order or warrant directly impacts the public interest. The Department is therefore obligated to conduct a thorough review to determine whether such improper disclosures occurred and to ensure that customers rights are protected by appropriate regulations in the future.

Both the United States and Connecticut Constitutions protect citizens against “unreasonable searches and seizures.” U.S. CONST. amend IV; CT CONST. art I, § 7. The United States Supreme Court has consistently recognized that the interception of electronic transmissions plainly implicates the Fourth Amendment’s requirements that a seizure be reasonable. “Few threats to liberty exist which are greater than that posed by the use of eavesdropping devices.” Berger v. New York, 388 US 41, 63 (1967). The United States Congress has enacted legislation requiring law enforcement officers to obtain a search warrant before interception such electronic communications. See Title 18 U.S.C. § 2510, et seq. Wire and Electronic Communications Interception and Interception of Oral Communications, (“Wiretapping Statute”).

As federal and state law clearly demonstrate, it is beyond dispute that the improper disclosure of confidential customer information without appropriate court orders impacts State and Federal Constitutional rights to be free from unreasonable

search and seizure. The issues presented in this proceeding bear directly on the public interest and the Department has an obligation to conduct a thorough investigation into whether such improper disclosures occurred and, if so, by what authority.

C. The Department Should Reject the Companies Claims that National Security Precludes any DPUC Review of the Companies Misconduct

In their Comments filed June 14, both Companies claimed that the Department was without authority to investigate potential misconduct on the part of the telephone companies because the matter involves classified material related to national security. AT&T Connecticut Comments, 9; Verizon Comments, 3-4. Both Companies assert this claim based upon their view that the United States Government has the ability to assert a claim that the subject matter would require the disclosure of “state secrets.” AT&T Connecticut Comments, 5-8; Verizon Comments, 4-5.

The Department should reject the Companies’ self-serving arguments as irrelevant to the issues presented in this proceeding. The sole issue presented for the Department’s consideration here is whether the Department can and should conduct a thorough investigation into certain alleged conduct that is squarely within the Department’s jurisdiction and directly impacts the public interest. As fully demonstrated above, the Department has plenary authority to review all aspects of the Companies manner of operation and that this proceeding directly impacts the public interest. The Department should therefore conduct that review.

In the event the United States Government deems it appropriate to intervene in order to assert claims related to national security, it can do so. There is no reason, however, for the Department to allow AT&T Connecticut or Verizon to assert national security claims on behalf of the United States Government. As noted above, the US DOJ

represents the United States Government, not the local telephone companies. If the DOJ intervened on behalf of the United States Government, the Department could then evaluate any national security claims and then make an appropriate determination on how best to proceed with this matter. As the state agency charged with protecting customers from wrongdoing by public service companies, the Department is obligated to conduct an investigation into these disturbing allegations. The Department should not voluntarily abdicate its responsibility based upon what AT&T Connecticut and Verizon claim the United States Government could or may seek to do in the future.

D. The Department Should Promulgate new Regulations to Protect Customers Reasonable Expectations of Privacy

The Department should promulgate regulations that protect customers reasonable expectations of privacy. As more fully argued in Subsection A, above, the Department has the broad authority to regulate all aspects of the manner of operation of Connecticut's public service companies. This broad authority necessarily includes the power to create regulations that govern the release of customer information – information that customers have a reasonable expectation will remain private and confidential. The promulgation of new regulations has become even more urgent now that AT&T has announced a new “privacy policy” explicitly stating that the customer's data belongs to the company and relaxing the circumstances where that data will be kept confidential. Despite its name, AT&T's new policy explicitly disclaims AT&T's obligation to keep customer information confidential. Specifically, the new “privacy” policy provides “[w]hile your account information may be personal to you, those records constitute business records that are owned by AT&T. As such, AT&T may disclose such records to protect its legitimate business interests . . . “ Exhibit A, p. 1.

It is unclear whether this new policy applies to telephone records or is limited to AT&T's internet and video customers. It is clear, however, that AT&T appears to place a low value on customers' privacy. The Department should therefore also institute a proceeding to promulgate regulations protecting consumers by prohibiting warrantless disclosures of customer information.

WHEREFORE, for the foregoing reasons, the Attorney General urges the Department to conduct a thorough investigation to determine if the Companies have improperly disclosed confidential customer information in Connecticut to the NSA without appropriate warrants, court orders or subpoenas. The Attorney General further urges the Department to promulgate regulations that protect customers reasonable expectations of privacy.

Respectfully submitted,

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Service is hereby certified
To all parties and intervenors
On this agency's service list.

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Exhibit

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